

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JAMES E. REID,

Appellant.

STATE OF WASHINGTON,

Respondent,

v.

QUDAFFI A. HOWELL,

Appellant.

No. 38924-0-II
(Consolidated with No. 38930-4-II)

(Linked with No. 39303-4-II)

UNPUBLISHED OPINION

No. 39303-4-II
(Linked with No. 38924-0-II)

Armstrong, J. — James Reid appeals from the sentence imposed following his convictions for unlawful delivery of a controlled substance, unlawful possession of a controlled substance with intent to deliver, second degree assault, intimidating a witness, and drive-by shooting. He argues that the trial court erred in imposing multiple consecutive weapon enhancements for offenses that constitute parts of the same criminal conduct. Concluding that our Supreme Court has resolved his arguments against him, we affirm.¹

The substantive facts are not relevant to Reid’s appeal.² Following a bench trial, the trial

¹ A commissioner of this court initially considered Reid’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

² The substantive facts are set forth in Reid’s prior appeal. *State v. Reid*, 146 Wn. App. 1031, 2008 WL 3319823 (August 12, 2008).

No. 38924-0-II (Consolidated with No. 38930-4-II)
(Linked with No. 39303-4-II)

court convicted Reid of the crimes listed above. The court found he was armed with a firearm during the unlawful possession with intent to deliver, the commission of both assaults, and the intimidation of the witness. The court calculated Reid's offender score as four. Under cause number 05-1-02318-1, the court sentenced him to 60 months for unlawful delivery and 72 months for unlawful possession with intent to deliver, plus 36 months for a firearm enhancement, for a total of 108 months. Under cause number 05-1-02771-3, the court sentenced him to 15 months for second degree assault, plus 36 months for a firearm enhancement, 31 months for intimidating a witness, plus 36 months for a firearm enhancement, and 36 months for drive-by shooting. The trial court made these base sentences concurrent with each other, but consecutive to the 108-month sentence imposed in 05-1-02318-1 and consecutive to the three firearm enhancements, for a total of 168 months.

Reid appealed. We affirmed his conviction but remanded for resentencing, holding that his convictions for intimidating a witness and second degree assault constituted the same criminal conduct and should have counted as one point toward his offender score.

On resentencing, the court calculated Reid's offender score as three. It changed his base sentences for the unlawful possession with intent to deliver from 72 to 60 months, for the second degree assault from 15 to 13 months, for the intimidating from 31 to 26 months, and for the drive-by shooting from 36 to 31 months. But it still made these base sentences consecutive to the 96-month sentence imposed in 05-1-02318-1 and consecutive to the two firearm enhancements, which left the total sentence at 168 months.

Reid appeals again. First, he argues that former RCW 9.94A.533(3) (2003), the weapon

No. 38924-0-II (Consolidated with No. 38930-4-II)
(Linked with No. 39303-4-II)

enhancement statute, prohibits multiple consecutive enhancements for offenses that constitute the same criminal conduct. Thus, he contends that the trial court erred in imposing consecutive firearm enhancements for both the intimidating conviction and one of the assault convictions. But our Supreme Court recently rejected this argument, holding that the enhancement statute is unambiguous and “a sentencing court must impose multiple firearm enhancements where a defendant is convicted of multiple enhancement-eligible offenses that amount to the same criminal conduct under the sentencing statute.” *State v. Mandanas*, 168 Wn.2d 84, 90, 228 P.3d 13 (2010).

Second, Reid argues that imposition of multiple firearm enhancements violates his right against double jeopardy. Our Supreme Court recently reaffirmed, however, that no double jeopardy violation occurs when the trial court imposes additional punishment based upon the defendant’s use of a firearm or other deadly weapon during a crime. *State v. Kelley*, 168 Wn.2d 72, 78, 226 P.3d 773 (2010) (citing *Missouri v. Hunter*, 459 U.S. 359, 366, 103 S. Ct. 673, 74 L. Ed. 2d 535 (1983), and *State v. Harris*, 102 Wn.2d 148, 158-60, 685 P.2d 584 (1984), *overruled on other grounds by State v. Brown*, 111 Wn.2d 124, 761 P.2d 588 (1988)).

Finally, in a statement of additional grounds, Reid argues that (1) the State presented insufficient evidence to support his conviction for intimidating a witness and (2) the trial court failed to apply the “objective intent” test to determine whether intimidating a witness, second degree assault, and drive-by shooting constitute the same criminal conduct. This court rejected these arguments in his first appeal and we will not address them again. *State v. Reid*, 146 Wn. App. 1031, 2008 WL 3319823 at *2-4 (August 12, 2008); *State v. Corrado*, 94 Wn. App. 228,

No. 38924-0-II (Consolidated with No. 38930-4-II)
(Linked with No. 39303-4-II)

236, 972 P.2d 515, *review denied*, 138 Wn.2d 1011 (1999).

The trial court did not err when resentencing Reid. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Van Deren, J.

Penoyar, C.J.